

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

DEPARTMENT OF TRANSPORTATION -
Highways Division, Maui District, State of
Hawaii,

Respondent.

CASE NO. OSH 2007-5

ORDER NO. 247

PRETRIAL ORDER

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Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board ("Board") on May 30, 2007, attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Laura Y. Kim, Deputy Attorney General, for Respondent, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:

A. Whether all citation items resulting from Inspection No. 309461481, including the characterizations and penalties, are valid and proper.

i. Citation 1 Item 1a alleged 29 CFR 1910.178(q)(1) was violated because employees were operating a Komatsu 30 fork lift truck with an inoperable horn. Inoperable warning signals involving fork trucks could cause collision with pedestrians who would not be audibly warned of the fork truck in the walking/working areas.

The violation was characterized as "Serious." A penalty of \$1,300.00 was imposed.

ii. Citation 1 Item 1b alleged that 29 CFR 1910.178(q)(7) was violated because daily checklists for fork trucks were not completed. Checklists should specify to look at basic

operational features of the equipment being used. The Komatsu 30 lift truck was found to be in defective condition as the warning horn was inoperable. The violation was characterized as "Serious."

- iii. Citation 1 Item 2 alleged that 29 CFR 1910.213(c)(1) was violated because the Rockwell rip saw had a missing guard, thus exposing employees to amputation and severe laceration hazards. In addition the stored blade was not recessed below the table service allowing the blade to be exposed.

The violation was characterized as "Serious." A penalty of \$1,625.00 was imposed.

- iv. Citation 1 Item 3 alleged that 29 CFR 1910.213(h)(1) was violated because the Rockwell radial arm saw had a defeated lower guard, thus exposing employees to amputation and severe laceration hazards. The blade was secured approximately 4 inches above the table with a nut and bolt allowing the blade to be exposed.

The violation was characterized as "Serious." A penalty of \$1,625.00 was imposed.

- v. Citation 1 Item 4 alleged that 29 CFR 1910.213(h)(4) was violated because the Rockwell radial arm saw did not return to its starting position when released, thus exposing employees to a contact with moving parts.

The violation was characterized as "Serious." A penalty of \$1,625.00 was imposed.

- vi. Citation 1 Item 5 alleged that 29 CFR 1910.213(i)(1) was violated because the employees were exposed to potential laceration and amputation injuries from an exposed bandsaw blade above the work rest. In addition, the bandsaw wheel was not fully encased and exposed nip points, caught-in, and exposed blade hazards.

The violation was characterized as "Serious." A penalty of \$1,625.00 was imposed.

- vii. Citation 1 Item 6a alleged that 29 CFR 1910.215(a)(4) was violated because there were three instances of abrasive wheel grinder work rests that were not adjusted to a maximum opening of 1/8 inch from the abrasive wheel. (a) the Dayton Industrial Grinder, model #1Z707x, 3/4 hp, 115v right side work rest was measured at 1 7/8 inches away from the wheel. (b) mechanic's shop north wall: the left side work rest was measured at 3/8 inch, and the right side work rest was measured at 1 inch. (c) mechanic's shop against the tool room wall: the left side work rest was measured at 3/4 inch, and the right side work rest was measured at 3/8 inch. The potential result of a tool becoming lodged between the wheel and work rest would be bruises and contusions from being struck by the tool or fragments of a broken wheel respectively.

The violation was characterized as "Serious." A penalty of \$1,300.00 was imposed.

- viii. Citation 1 Item 6b alleged that 29 CFR 1910.215(b)(9) was violated because there were three instances of abrasive wheel grinders with peripheral protecting members (tongue guard) greater than 1/4 inch from the surface of the wheel. The potential result of the improperly adjusted tongue guards is bruises and contusions from being struck by pieces of a broken wheel. (a) bridge crew's shop: left side 7/8 inch, and right side 1 1/8 inch. (b) mechanics's shop north wall: left side 2 1/4 inch, and right side 1 1/8 inch. (c) mechanic's shop south wall: left side 3/4 inch, and right side 1 1/4 inch respectively.

The violation was characterized as "Serious."

- ix. Citation 1 Item 7 alleged that 29 CFR 1910.305(b)(1) was violated because an unused opening in a circuit breaker panel box had a missing switch (position #16), thus exposing employees to inadvertent contact with live parts inside. The potential result of contact with live parts would be serious injury or death by electrocution.

The violation was characterized as "Serious." A penalty of \$1,625.00 was imposed.

- x. Citation 1 Item 8 alleged that 29 CFR 1910.305(g)(2)(iii) was violated because a Miller Big 40, 2 phase ARC welder, serial #9584-145 had both the lead cable and ground cable insulation pulling away from its fittings and exposing bare copper wires. A broken strain relief exposed employees to a potential electric shock.

The violation was characterized as "Serious." A penalty of \$1,300.00 was imposed.

- xi. Citation 2 Item 1 alleged that 29 CFR 1910.178(1)(4)(iii) was violated because the employer had not certified that each employee authorized to operate forklift trucks had been re-evaluated as required by the Powered Industrial Trucks standard. The potential result of allowing unevaluated employees to operate forklift trucks is serious injury to the operator or other employees, such as fractures and internal injuries, from improper operation of the truck and/or mishandling of the load.

The violation was characterized as "Other."

2. The deadline for the parties' final naming of witnesses is **July 31, 2007**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with the witnesses' addresses and expected area of testimony, to the other party and to the Board by this date. In addition, any expert witness' reports shall be exchanged by this date.
3. The discovery cutoff date is **August 31, 2007**. All other discovery, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **October 9, 2007**, at 9:30 a.m., or as soon thereafter as this case can be heard, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v.
DEPARTMENT OF TRANSPORTATION, Highways Division, Maui District, State of
Hawaii
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DATED: Honolulu, Hawaii, May 30, 2007.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Laura Y. Kim, Deputy Attorney General